IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 12 OF 1989

The Commissioner of Income-tax,
Bombay City-V, Bombay. ...Applicant
V/s.
M/s.Unichem Laboratories Ltd. ...Respondent

Mr.Ashok Katangle for Applicant.
None for Respondent.

CORAM : V.C. DAGA AND
A.S. AGUIAR, JJ.

DATED : JULY 1, 2005.

P.C. :-

. Heard learned Counsel for the applicant.

2. By this reference under Section 256(1) of the Income-tax Act, 1961, the Income Tax Appellate Tribunal has referred the following questions of law for the opinion of this Court :-

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that in computing the disallowance in respect of expenditure which resulted in remuneration benefit or amenities to

employees provisions of section 40(c) of the Income-tax Act, 1961 and not those of section 40A(5)(a) thereof would be applicable ?

2. Whether on the facts and in the circumstances of the case, the Tribunal was justified in allowing Investment Allowance U/s.32A of the I.T.Act, 1961 on small bin trolleys, Drum Lifter, Morris Elevating Truck and Hand Cart? "

3. So far as second question is concerned, the said question has impact of investment allowance in the sum of Rs.19,409/- spent on the purchase of new assets such as Small Bin trolleys, Drum lifter, Morris Elevating Truck and Hand Cart. On the above amount, the I.T.O. has allowed depreciation at the rate of 10% treating the same as plant and machinery and at the rate of 30% treating them as ordinary motor lorries. Thus, the dispute is only in respect of 20% depreciation which was hardly worked out to Rs.5000/- to Rs.6000/-.

4. In this view of the matter, the reference stands disposed of complying the Judgement of this Court in the case of **Commissioner of Income Tax V/s. Hico Products Pvt.Ltd. (1993) 201 ITR Page 567** in favour of the Assessee and against the Revenue.

(A.S. AGUIAR, J.) **(V.C. DAGA, J.)**